

KUTAK ROCK LLP

THE THREE SISTERS BUILDING
214 WEST DICKSON STREET

FAYETTEVILLE, ARKANSAS 72701-5221

479-973-4200

FACSIMILE 479-973-0007

www.kutakrock.com

LITTLE ROCK OFFICE

SUITE 1100

426 WEST CAPITOL AVENUE

LITTLE ROCK, ARKANSAS 72201-3409

501-975-3000

ROBERT W. GEORGE
robert.george@kutakrock.com
(479) 973-4200

ATLANTA
CHICAGO
DENVER
DES MOINES
IRVINE
KANSAS CITY
LITTLE ROCK
LOS ANGELES
OKLAHOMA CITY
OMAHA
PASADENA
RICHMOND
SCOTTSDALE
WASHINGTON
WICHITA

June 30, 2006

VIA FAX: (405) 842-2913

Robert Allen Nance
RIGGS, ABNEY, NEAL, NEAL, TURPEN,
ORBISON & LEWIS
5801 N. Broadway, Ste. 101
Oklahoma City, OK 73118

Re: *State of Oklahoma, et al. v. Tyson Foods, Inc., et al.*

Dear Mr. Nance:

I have reviewed Plaintiff's Objections and Responses to Separate Defendant Tyson Foods, Inc.'s First Set of Interrogatories (the "State's Discovery Responses"). Please consider this letter to constitute my attempt to confer in good faith with the State in an effort to secure the material and information sought in the First Set of Interrogatories without court action pursuant to Fed. R. Civ. P. 26(a)(2)(B).

The more significant deficiencies in the State's Discovery Responses are described in detail below. This is not an exhaustive list and Tyson Foods, Inc. ("Tyson") reserves the right to seek relief from the Court on all deficiencies whether expressly listed in this letter or not. If the deficiencies identified hereinafter are not corrected by close of business on July 14, 2006, Tyson will file a motion to compel pursuant to Fed. R. Civ. P. 26(a)(2)(A).

General Issues or Deficiencies

Privilege Log. First, please confirm that the privilege log attached to the State's Discovery Responses describes all information and documents responsive to these interrogatories which have been withheld on the basis of a claim of privilege. If there is additional information being withheld because of such claims that is not listed on the privilege log, please supplement the privilege log immediately. Second, the privilege log supplied does not indicate which documents or information withheld would be responsive to which interrogatories. Please provide supplemental interrogatory responses or a revised privilege log to specify which of the withheld documents are responsive to which interrogatories.



KUTAK ROCK LLP

Robert Allen Nance
 June 30, 2006
 Page 2

Rule 33(d) Business Records References. In response to many of the interrogatories the State has elected to refer Tyson to “business records” pursuant to Fed. R. Civ. P. 33(d) instead of actually answering the interrogatories. Tyson does not believe that the Rule 33(d) option is truly available to the State for many of the interrogatories. In any event, the State’s specification of records is insufficient. As you know, Rule 33(d) requires the responding party to “specify the records from which the answer may be derived or ascertained.” The specification must “be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.” FED. R. CIV. P. 33(d). Broad references to the State’s document production and/or web-accessible document repositories for various state agencies are not sufficient under Rule 33(d). Accordingly, please amend the State’s Discovery Responses to specifically identify the records wherein Tyson can find the answers to each interrogatory.

Attorney-Work Product Claims with Respect to Sampling Data and Other Facts. It appears that the State is continuing its unfounded claim that facts known to experts including the results of environmental sampling can be withheld as privileged under Fed. R. Civ. P. 26. These issues are the subject of Cobb-Vantress’ pending First Motion to Compel (Dkt. No. 743.) As explained in the briefing associated with that motion, the State’s position is contrary to the law. Accordingly, Tyson asks the State to immediately supplement its discovery responses to provide responsive factual information regardless of whether those facts were gathered by or are known to the State’s consulting experts.

Additionally, Tyson challenges the State’s claim of protection under the work product doctrine. Materials produced during the ordinary course of business are not entitled to protection as attorney work product. Neither the State’s answers nor its Privilege Log provide sufficient information for Tyson to reasonably determine whether the State agency materials for which work product protection is asserted were prepared in anticipation of litigation or in the ordinary course of business. Accordingly, Tyson asks the State to immediately supplement its discovery responses by providing additional information that will allow Tyson to assess the applicability of the work product doctrine.

Interrogatory-Specific Deficiencies

Interrogatory No. 3. This interrogatory ask for an identification of properties owned by the State in the IRW and a description of the uses and activities conducted on such properties within the 3 years prior to the initiation of this lawsuit. The State has objected on the basis that “[t]he burden of determining the answer to this interrogatory is substantially the same for Defendant, Tyson Foods, Inc., as it is for the State of Oklahoma.” Clearly, this is not true. The State should know or at least be able to readily identify those parcels of land in the IRW owned by the State. Tyson should not be required to search the land records of multiple counties to ascertain this information. Furthermore, the land records would not disclose the uses and activities of the properties owned by the State. Please respond specifically to this interrogatory.

KUTAK ROCK LLP

Robert Allen Nance

June 30, 2006

Page 3

Interrogatory No. 4. This interrogatory follows up on Interrogatory No. 3 by asking the State to specifically identify those parcels of land owned by the State in the IRW on which chemicals, fertilizers or waste material have been collected, handled, treated, stored, or disposed of and to then identify the nature and volume of substances used or disposed on such properties. It is hard to imagine a more relevant interrogatory given the nature of the allegations in this case. The State's response to this interrogatory provides absolutely no information and the State's claim that Tyson can obtain information about activities occurring on State-owned lands as easily as the State can is simply absurd. Please respond specifically to this interrogatory.

Interrogatory No. 5. This interrogatory seeks identification of and information pertaining to non-poultry related sources in the IRW of the substances which are the subject to the State's complaint. The State objected stating that it would not "speculate about 'potential' sources" and then stated that some information responsive to this request may be found within the State's business records. Clearly, the State is aware of the existence of potential, and in fact known, non-poultry related sources in the IRW for the substances at issue in this case. Tyson is entitled to have that knowledge on the part of the State memorialized in an interrogatory response. Please respond directly to this interrogatory by identifying and providing the information requested at least with respect to known non-poultry related sources.

Interrogatory No. 6. This interrogatory asks the State to identify instances in which it has issued permits, licenses or other forms of authorizations to operators in the IRW for the release, use, discharge or disposal of the substances which are the subject of the State's complaint and to provide information about the holders of such permits and the activities permitted under such permits. The State has objected on the basis that the interrogatory implies that the "mere permitting of person/entities necessarily insulates one against liability and then proceeds to discuss the State's novel theory of liability in this case that Tyson and the other defendants can be held liable for the land application practices of growers even if those growers have acted in accordance with "permits" issued by the State. While interesting, this is irrelevant to interrogatory and certainly does not constitute a valid objection. This interrogatory was not focused on permits, licenses or authorizations issued to poultry growers. This interrogatory seeks identification of all permits, licenses or authorizations wherein the State has authorized the release, use, discharge or disposal in the IRW of the substances at issue in this case. This information should be readily available to the State and should be provided in a supplemental interrogatory response.

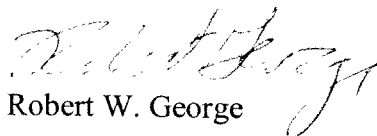
Interrogatory Nos. 9 -11. These interrogatories seek information confirming the State's allegation that the acts of *the Tyson defendants* pose a threat to the health of any person in the IRW, an imminent and substantial endangerment to the environment of the IRW or have resulted in the release to a water body in the IRW of a CERCLA hazardous substance. The State's response provides no Tyson-specific information. If the State has no such information, then it needs to explicitly state that in its responses to these interrogatories. If it has such information, please identify it. In either event, please supplement your responses to these interrogatories.

KUTAK ROCK LLP

Robert Allen Nance
June 30, 2006
Page 4

Your prompt attention to the above requests is imperative. The information sought in these interrogatories is essential to my client's defense of this case. Consequently, while I sincerely hope that we can resolve the above-described deficiencies without having to involve the Court, my client will not delay in seeking relief from the Court should your response to this letter be inadequate.

Cordially,



Robert W. George

cc via e-mail: Stephen Jantzen
Patrick Ryan
Mark Hobson
Jay Jorgenson